



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0013]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 11 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2018-0013 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Mail:** Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.

- Fax: 1-202-493-2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, S.E., Room W64-224, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver’s medical certification.

The 11 individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

In July 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (Qualification of Drivers; Vision Waivers, 57 FR 31458, July 16, 1992). The current Vision Exemption Program was established in 1998, following the

enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of 49 CFR 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA-1998-3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary

only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors – such as age, sex, geographic location, mileage driven and conviction history – are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., “Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,” Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used three consecutive years of data, comparing the experiences of drivers in the first two years with their experiences in the final year.

II. Qualifications of Applicants

Scott B. Barker

Mr. Barker, 63, has had macular degeneration in his right eye since 2011. The visual acuity in his right eye is 20/70, and in his left eye, 20/20. Following an examination in 2018, his optometrist stated, “Mr. Barker has "sufficient vision to perform the driving tasks required to operate a commercial vehicle." [sic].” Mr. Barker reported that he has driven straight trucks for two years, accumulating 40,000 miles, and tractor-trailer combinations for 42 years, accumulating 2.5 million miles. He holds a Class A CDL from Washington. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Christopher L. Binkley

Mr. Binkley, 27, has retinal scarring in his right eye due to toxoplasmosis in

childhood. The visual acuity in his right eye is 20/400, and in his left eye, 20/15. Following an examination in 2018, his optometrist stated, "It is my medical opinion that, in spite of reduced central acuity in the right eye, Christopher's excellent binocular acuity and full binocular visual field provide him sufficient vision to safely operate a commercial vehicle." Mr. Binkley reported that he has driven straight trucks for nine years, accumulating 162,000 miles. He holds an operator's license from New Hampshire. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Darrell B. Emery

Mr. Emery, 42, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2018, his optometrist stated, "He has 20/20 acuity with the right eye and 20/20 acuity with both eyes. This seems to be satisfactory for commercial driving." Mr. Emery reported that he has driven straight trucks for one year, accumulating 60,000 miles and tractor-trailer combinations for three years, accumulating 330,000 miles. He holds a Class A CDL from Texas. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Louis D. Faw

Mr. Faw, 63, has a macular scar in his left eye due to a traumatic incident in 2005. The visual acuity in his right eye is 20/20, and in his left eye, count fingers. Following an examination in 2018, his ophthalmologist stated, "I certify that, in my opinion, the patient has sufficient vision to perform the task required to operate a commercial vehicle." Mr. Faw reported that he has driven straight trucks for 46 years, accumulating 667,000 miles, and tractor-trailer combinations for 35 years, accumulating 175,000 miles. He holds a Class A

CDL from North Carolina. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Troy L. Hargrave

Mr. Hargrave, 54, has had glaucoma in his left eye since 2014. The visual acuity in his right eye is 20/15, and in his left eye, no light perception. Following an examination in 2017, his ophthalmologist stated, "Obviously, Mr. Hargrave has sufficient vision to perform driving tasks required to operate a commercial vehicle as he is currently legally driving a commercial vehicle for employment." Mr. Hargrave reported that he has driven straight trucks for 25 years, accumulating 650,000 miles, and tractor-trailer combinations for 12 years, accumulating 1.2 million miles. He holds a Class A CDL from Missouri. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Randall J. Kau

Mr. Kau, 54, has had aphakia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/800. Following an examination in 2018, his optometrist stated, "Mr. Kau has been driving for many years with his current vision and I feel he is safe to continue to operate a commercial vehicle." Mr. Kau reported that he has driven straight trucks for 30 years, accumulating 600,000 miles. He holds an operator's license from Wisconsin. His driving record for the last three years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

James O'Brien

Mr. O'Brien, 51, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2017, his optometrist stated, "In my professional opinion he has sufficient vision to perform all driving

tasks required to operate commercial vehicles.” Mr. O’Brien reported that he has driven straight trucks for 32 years, accumulating 1.28 million miles. He holds an operator’s license from Massachusetts. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Patrick A. Piekkola

Mr. Piekkola, 44, has a prosthetic left eye due to a traumatic incident in 1980. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2017, his ophthalmologist stated, “It is our opinion that Patrick has sufficient vision to perform the driving tasks required to operate a commercial vehicle.” Mr. Piekkola reported that he has driven straight trucks for six years, accumulating 180,000 miles, and tractor-trailer combinations for four years, accumulating 40,000 miles. He holds an operator’s license from South Dakota. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Marco A. Pinto

Mr. Pinto, 70, has a prosthetic left eye due to a traumatic incident in 2001. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2018, his ophthalmologist stated, “I believe he has sufficient vision to perform the driving tasks needed to operate a commercial vehicle.” Mr. Pinto reported that he has driven tractor-trailer combinations for 54 years, accumulating 5.4 million miles. He holds a Class A CDL from New York. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Andrew R. Sampson, Jr.

Mr. Sampson, 50, has complete loss of vision in his left eye due to a ruptured globe in

childhood. The visual acuity in his right eye is 20/15, and in his left eye, no light perception. Following an examination in 2018, his optometrist stated, "I certify that Mr. Sampson, in my medical opinion, has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Sampson reported that he has driven straight trucks for 15 years, accumulating 720,000 miles, and tractor-trailer combinations for two years, accumulating 80,000 miles. He holds a Class A CDL from Maryland. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Khamla Vongvoraseng

Ms. Vongvoraseng, 37, has had amblyopia in her right eye since childhood. The visual acuity in her right eye is 20/100, and in her left eye, 20/20. Following an examination in 2018, her optometrist stated, "Without a doubt, I certify that in my medical opinion, Ms. Khamla Vongvoraseng has sufficient vision to perform the driving task required to operate a commercial vehicle." Ms. Vongvoraseng reported that she has driven straight trucks for five years, accumulating 121,920 miles. She holds an operator's license from North Carolina. Her driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated in the dates section of the notice.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery,

but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA-2018-0013 and click the search button. When the new screen appears, click on the blue “Comment Now!” button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA-2018-0013 and click “Search.” Next, click “Open Docket Folder” and you will find all documents and comments related to this notice.

Issued on: June 11, 2018

Larry W. Minor,
Associate Administrator for Policy.

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